S.B.Civil Writ Petition No.418/2003

State of Rajasthan vs. Hari Ram and others.

Date : 12.7.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.OP Boob, Addl.GA, for the petitioner.
Mr.S Sharma, for the respondents.

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Heard learned counsel for the parties.

The petitioner State is aggrieved against the order dated 31.7.2001 by which the Board of Revenue allowed the appeal of the private respondents and sent the matter back to the Additional Collector, Sri Ganganagar for regularisation of the land in question.

Brief facts of the case are that a piece of land of Chak No.17 LNP in Tehsil Padampur District Sri Ganganagar having Murabba No.34 was allotted to respondent Purkha Ram on 25.8.1962 measuring 4 bighas 6 biswas. Out of this land, only 2.8 bighas nahari land and 1.18 bighas barani land was sold to Hari Ram and Shiv Kumar through registered sale deed dated 1.1.1969. The purchasers submitted an application for grant of regularisation in their name under Section 13A of the Rajasthan Colonisation Act and deposited penalty amount

on 19.9.1992. The Additional Collector vide order dated 26.10.1994 refused to regularise the land in the name of the applicants/respondents. Not only this, but the Collector ordered resumption of the land in favour of the State Government on account of violation of Section 42B of the Rajasthan Tenancy Act. Being aggrieved against the order of the Additional Collector dated 26.10.1994, the applicants/purchasers of small piece of land preferred appeal before the Revenue Appellate Authority which was dismissed vide order dated 14.12.1995. The Board of Revenue allowed the appeal of the private respondents/applicants vide order dated 31.7.2001 on the ground that when the petition under Section 175 of the Rajasthan Tenancy Act for taking possession from the purchasers was dismissed and since the purchasers have already sought regularisation of sale in their favour and deposited part of the amount, then the Additional Collector should have regularised the land in favour of the purchasers. The State has preferred this writ petition to challenge the order of Board of Revenue dated 31.7.2001.

According to the learned counsel for the petitioner, the Board of Revenue committed serious error of law and ignored the fact that the sale deed dated 1.1.1969 was ab-initio void and, therefore, the Additional Collector could not have regularised the

land in the name of the purchasers/applicants. It is also submitted that the land of member of Scheduled Caste has been transferred to the persons who are not member of Scheduled Caste, therefore also, the sale deed is void.

Learned counsel for the respondents submitted that a small piece of land was purchased as back as in the year 1969 by registered sale deed and that sale deed was not challenged either by State or by the seller. It is also submitted that the respondents applied for regularisation of the land and in that proceedings, the Additional Collector directed to resume the land in favour of the State. It is also submitted that in the said proceedings, regularisation could have been refused but so far as possession is concerned, the State proceeded to take possession from the respondents under Section 175 of the Rajasthan Tenancy Act which is regular process of taking regularisation and if regularisation is not made and possession continues with the respondents, then by virtue of laws of limitation, the applicants can acquire khatedari rights also.

I considered the submissions of learned counsel for the parties and perused the facts as well as reasons given by the courts below.

It is not in dispute that the land was allotted to one Purkha Ram on 25.8.1962. The land was sold almost after seven years on 1.1.1969. Since 1969, nobody challenged the sale deed neither the State nor the seller. The possession of the respondents continued and they sought regularisation of their land by moving application under Section 13A of the Act of 1976 and deposited the penalty amount on 19.9.1992. Since the purchase of the land by the applicants/respondents almost 28 years have already passed and looking to the small piece of land for which regularisation is sought on deposit of land, this Court is not inclined to set aside the order of the Board of Revenue because of the reason that during this period, the respondents must have invested huge amount and the State remained silent for almost 28 years in dispossessing the respondents. On the ground of equity alone, the writ petition of the petitioner is dismissed.

Consequently, this writ petition is dismissed.

It is made clear that the regularisation may be made only after taking the prescribed amount which can be charged in such type of matters.

(PRAKASH TATIA), J.

S.Phophaliya